produce his card at the earliest possible moment, and that being so, he was quite right to dismiss the case.

What I have said, of course, relates only to the question of what constitutes an offence under Regulation 10 of the Regulations and does not necessarily have a specific bearing on the exercise by the Police of their powers under Regulation 20 to arrest without warrant any person suspected of the commission of an offence against the Regulations. It may well be that a person who instead of carrying his Identity Card upon him leaves it in a place of safety would be immune from criminal liability under Regulation 10, but it does not follow that he would not be exposed, and exposed without remedy, to the danger of being arrested by a Police Officer who genuinely took the view that in all the circumstances of the particular case failure to produce an Identity Card for immediate inspection made out grounds for suspicion that an Identity Card did not exist and that accordingly the party in question committed the offence of failing to register.

Reference answered.

BALFOUR v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C. J., Taylor and Spenser-Wilkinson, JJ.) December 15, 1949]

[K. L. — Criminal Appeal No. 106 of 1949]

Criminal trial — Evidence — Admissibility of — Evidence called by the Court after close of case for defence — Criminal Procedure Code, s. 425.

The appellant in this case was tried at the Assizes on charges of house-breaking by night with intent to steal, and theft in a dwelling. A principal witness for the prosecution named Suppiah, who was previously an informer, said in his evidence that while he was taking his food at a stall he noticed a soldier offering jewellery to one Hanifa the proprietor of the stall on payment of refreshment but Hanifa declined to take the jewellery. It was expected that the prosecution would call Hanifa as the earliest witness of possession by the appellant of any of the articles alleged to have been stolen. This was not done. This omission was noticed by the trial Judge after the conclusion of the defence evidence but before the speeches of counsel. He adjourned the trial at that stage and directed Hanifa to be called.

Held, that although section 425 of the Criminal Procedure Code authorises the Court to call an additional witness at any stage and although the Court may, in special circumstances, properly do so of its own motion where a case is conducted by counsel, and more especially where a preliminary enquiry has been held, this power should be exercised only in rar cases as, for instance, where one side has raised at the trial a point which the other side could not have foreseen.

Cases referred to :—

(1) *Rex v. Shum Soo* (1949) M.L.J. 142.

(2) *Rex v. Day* (1940) 1 All E.R. 402; 27 Cr. App. R. 168.

CRIMINAL APPEAL.

Appellant in person.

H. Shepherd (D.P.P.) for the respondent.

The judgment of the Court was delivered by :—

Taylor, J. : — The appellant is a Bombardier of the Royal Artillery stationed at Tampin. On the 28th August, 1949 a large number of soldiers, including the appellant, who had recently returned from prolonged operations in the jungle, went to the town and to the local Amusement Park to celebrate the lifting of a curfew.

About 8.30 that evening a soldier visited a block of quarters in Padang Road and spent several minutes examining the identity card of one of the occupants, a mechanic, who saw him in a good light. The soldier then entered another unit of the quarters, occupied by a hawker and her children; no member of the family was then at home. The mechanic informed a neighbour who went and telephoned to the police and to the military and also informed the hawker. Meantime the mechanic saw the soldier go to the back of the quarters and join another soldier. They then went towards the town and separated. The hawker came home, found her door open and her room ransacked and went to the Police Station where she specified $80/- in cash, a ring and a bracelet as articles missing. Her report was timed at 9.55 p.m.

About 9.15, one Suppiah, an unemployed person who had previously acted as a police informer, while taking food at a stall just outside the entrance to the Park, noticed a soldier offering jewellery to the proprietor in payment for refreshments. The proprietor, whose name is Hanifa, declined the jewellery. Suppiah followed the soldier into the Park and saw him hand the jewellery to the Chinese proprietor of another refreshment stall. Suppiah informed two detectives who were on duty in the Park. They went to the stall. The soldier was still there with others. In his presence and hearing the proprietor indicated him as the one who had handed to him a gold ring, a child's bracelet and a necklace, which he then and there handed to the detectives. This was at about 9.45 p.m. They arrested the soldier, who is the present appellant, and took him to the Police Station. The time of arrival does not appear but the jewellery was handed to the Station Officer at 10.50 p.m. The appellant was searched by the Officer-in-charge, Police District, who found two dollars and some odd cents in his pockets.

The complainant, on that same night, identified as hers the three articles brought in by the detectives. The mechanic was at the police station at this time and there

is evidence that Suppiah and the Chinese stall keeper were also there and identified the appellant.

On 30th and 31st August the Police held formal identification parades at which the mechanic and Suppiah and the proprietor of the stall identified the appellant.

We observe that though the parades seem to have been carefully arranged, the evidence of the identification was given in the form : — "He identified him as the man who handed the jewellery" — an ambiguous phrase, strongly suggesting that an oral statement which is inadmissible is being related indirectly. The proper way is to instruct the witness beforehand that if he sees the man who handed the jewellery he is to pull that man out of the line, *Rex v. Shum Soo*[1].

The appellant was tried at the Assizes in Seremban, before a Judge alone, on charges of house-breaking by night with intent to steal, and theft in a dwelling.

The accused, who was defended by Counsel, gave evidence in which he stated that he had found three articles of jewellery, all together, on the floor of a latrine in the Amusement Park and he gave a detailed account of his movements that evening, the drift of which was to show that he had been in the Park the whole evening and especially at about the time of the house-breaking. In support of this alibi he called a number of other soldiers who were in the park that night. As they were admittedly moving about among the different stalls it is highly unlikely that they kept the appellant under continuous observation or noticed the duration of his absence at the latrine. Why should they do so? The only one who, on the appellant's own evidence, was with him throughout the critical hour was a particularly hesitating witness. The learned trial Judge rejected the alibi on these grounds and he did not accept the explanation of the finding in the latrine which, in the absence of any attempt to trace the owner, amounts to an admission of facts constituting the offence of criminal misappropriation (the local equivalent of larceny by finding).

There are, however, various points in the prosecution case which call for comment. The evidence of Suppiah, who is an informer, requires close scrutiny and all available corroboration should have been adduced. It was therefore to be expected that the prosecution would have called Hanifa as the earliest witness of possession by the appellant of any of the articles alleged to have been stolen. This was not done. This omission appears to have been noticed by the trial Judge after the conclusion of the defence evidence but before the speeches of counsel. He adjourned the trial at that stage and directed Hanifa to be called.

It is correct that section 425 of the Criminal Procedure Code authorises the Court to call an additional witness at any stage and that the Court may, in special circumstances, properly do so of its own motion but where a case is conducted by counsel and more especially where, as here, a preliminary enquiry has been held before a committing Magistrate, this power should be exercised only in rare cases as, for instance, where one side has raised at the trial a point which the other side could not have foreseen, *Rex. v. Day*[2]. In the opinion of this Court the calling of Hanifa by the trial Judge, though not illegal, was a wrong exercise of discretion and his evidence ought to be excluded. What he said was that the appellant had offered him a ring, apparently gold, — a ring only — whereas Suppiah said that the appellant had offered all three articles to Hanifa. As Suppiah had certainly seen all three articles at the Chinese owned stall about half-an-hour later this difference was, as the trial Judge observed, explicable as a minor difference in recollection and did not amount to a discrepancy affecting credit.

The Judge also relied on Hanifa as one of the witnesses identifying the appellant but this is not important because in our opinion the whole question of identity was mishandled by the prosecution. The appellant was arrested by the detectives at the Chinese stall because the proprietor identified him as the soldier who had traded the jewellery. If there was any mistake or doubt about that identification it had already occurred and a subsequent parade could not be expected to cure it. The proprietor could but identify at the parade the man whom he had given in charge and seen arrested. The fact that he saw the appellant later the same night in custody at the police station was a further reason for not calling him to the parade. Similar considerations apply to the identification by Suppiah, who was present at the arrest, and by the mechanic who also saw the appellant at the Police Station. The parade was of no probative value. The only useful purpose it served was accidental. It shewed the cautious nature of the Chinese witness who, having seen the appellant and others without caps on the night of the incident, insisted on having their caps removed before he would identify anyone.

In our opinion the case ought to have been treated throughout as one of recent possession. As the case stood that night at 11 p.m. the police had a confirmed report of theft of certain articles and a man arrested almost in the act of disposing of similar articles.

Manifestly the immediately important step was to investigate the identity of the articles. The Officer-in-charge, Police District, should have borrowed half-a-dozen or more common articles of jewellery — laid them on a table with the three articles recovered interspersed and then said to the complainant: — "Look on that table and if there is anything of yours there, pick it out." If she had then picked out all three articles their identity would have been clearly established and also the omission of the necklace from her report would have been made good. We do not regard that omission as in the least affecting her credit because it is common experience that not all the articles stolen are missed on the first inspection but it detracts a little from the weight of her evidence as to the necklace. Further, in the absence of any detailed evidence of her identification of the articles we are forced to conclude that they were merely shewn to her and that she claimed them — which is, in effect, answering a grossly leading question. On the other hand we have the facts that she mentioned a ring and bracelet before she could have known of the arrest, that these two articles were in the possession of the appellant, that they are of a type natural to her but unusual to the appellant, that she was not cross-examined as to her identification of them and that no question as to that identification was put to the Officer-in-charge, Police District, who was called as a witness for the defence. In these circumstances we are of opinion that the identity of the articles was sufficiently proved.

As regards the identity of the person, we have the undisputed fact that the Chinese stall-holder pointed out the appellant on the spot as the man who disposed of the jewellery; the evidence is confirmed not only by Suppiah but also by the accused himself. This fact tends strongly to exclude the chance of mistake in identity by the other independent witness, the mechanic, who testifies to the actual entry.

Having given the most detailed and anxious consideration to this case, disregarding altogether the evidence which was wrongly admitted and ignoring the dubious identification at the parades, we are left with clear proof of a house-breaking and theft, with undisputed evidence of very recent possession and the absence of a reasonable explanation. These facts, coupled with the evidence of one sound witness who identifies the appellant as the wrongful entrant, constrain us to hold that the appellant was rightly convicted on both charges.

His Commanding Officer gave him an excellent character as a soldier. We accept this unreservedly. We do not suspect that he started off from his camp that evening with an intention to steal. Though he had taken some drink he was never in such a state as to be incapable of forming a criminal intention. It is likely enough that he would not have formed such an intention had he not been to some extent inflamed or made reckless by drink but these factors can only affect sentence; they do not reduce responsibility for crime.

The concurrent sentences of two years and one year, to run from the date of the offence, are in no way excessive. In the result the appeal is dismissed.

Appeal dismissed.

TAN PENG ANN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) December 29, 1949]

[Ipoh — Criminal Appeal No. 88 of 1949]

Penal Code, s. 420 — Charge of cheating — What particulars necessary in — Cheating — What amounts to.

In this case the appellant was convicted on two charges of cheating and dishonestly inducing the delivery of property in contravention of section 420 of the Penal Code. In the charges no particulars were alleged of the way in which the appellant deceived the complainants.

Held, (1) that in framing such a charge it is necessary to set out not merely the fact that accused had obtained goods by dishonest means, but also the deception which has been practised; and (2) that it is not every form of dishonestly inducing a person to deliver property that amounts to cheating, but only those forms of it in which the dishonesty consists in the deceiving of the person concerned.

Cases referred to:—

(1) *Kanwar Sain v. The Crown* (1938) I.L.R. 19 (Lahore) 662.

(2) *Sathiah v. Rex* (1938) M.L.J. 30.

CRIMINAL APPEAL from the Sessions Court, Ipoh.

C. W. Shuttleworth for the appellant.

E. N. Griffith-Jones for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Thomson, J.: — The appellant in this case appeared before the Sessions Court at Ipoh on two charges of cheating and dishonestly inducing the delivery of property in contravention of section 420 of the Penal Code. He was convicted on both charges, and in respect of each was sentenced to three months' rigorous imprisonment and in addition to pay a fine of $500/- or undergo a further period of three months' rigorous imprisonment in default of payment. He was also ordered to pay sums amounting in the total to $500/- by way of compensation to three persons who were in